

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chairman on January 31, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Cecil Weeding, Chairman (D)
Betty Bruski, Vice Chairman (D)
Bill Farrell (R)
John Harp (R)
Francis Koehnke (D)
Jerry Noble (R)
Jack Rea (D)
Lawrence Stimatz (D)
Larry Tveit (R)

Members Excused: None.

Staff Present: Paul Verdon (Legislative Council).
Pat Bennett, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None.

HEARING ON HOUSE BILL 98

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE ED DOLEZAL, District #34, stated this bill makes provisions for a special license plate for a special group of people. These are people who were actually at Pearl Harbor during the time of the Pearl Harbor attack in 1941. This group is a nationally formed group. There have been about 34 states who have allowed this form of recognition. There is an amendment to the bill. (SEE EXHIBIT 1)

PROPONENTS:

BILL EMERSON, Secretary Treasurer, Big Sky Chapter #1, gave testimony in support of HB 98. (SEE EXHIBIT 2)

GEORGE POSTOM, United Veterans Committee of Montana, stated that this is a good way to recognize these people for what they

stand for.

RICH BROWN, Administrator for the State of Montana Veterans Affairs Division, stated they endorse this legislation.

JOHN DENHERDER, Legislative Director of the Department of Disable Vets endorsed House Bill 98.

OPPONENTS:

None.

QUESTIONS FROM COMMITTEE MEMBER:

SENATOR REA asked Bill Emerson which ship he was on.

BILL EMERSON stated he was on the USS Hope.

SENATOR WEEDING asked Mr. Emerson how long his organization has been formed in Montana.

MR. EMERSON stated they were chartered in Montana in 1972.

CLOSING BY SPONSOR:

REPRESENTATIVE DOLEZAL stated this was a perfect time for this to go into effect, because this year is the 50th anniversary of the bombing of Pearl Harbor.

EXECUTIVE ACTION ON HOUSE BILL 98

Discussion:

REPRESENTATIVE DOLEZAL stated that Senator Franklin would be carry the bill.

Amendments, Discussion, and Votes:

SENATOR HARP MOVED to ADOPT the amendments to House Bill 98.
(SEE EXHIBIT 1)

MOTION to ADOPT the amendments to House Bill 98 PASSED UNANIMOUSLY.

Motion:

SENATOR HARP MOVED that HOUSE BILL 98 BE CONCURRED IN AS AMENDED.

MOTION PASSED UNANIMOUSLY THAT HOUSE BILL 98 BE CONCURRED IN AS AMENDED.

HEARING ON HOUSE BILL 48

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE ED GRADY, District #47, stated that House Bill 48 refers to tow truck warning signs and fire extinguishers. This bill will require a certain sign, which is 3 X 3 ft. sign, placed a certain distance in front and behind. It also addresses the extinguishers. They have to carry a dry chemical fire extinguisher instead of a liquid.

Proponents' Testimony:

HENRY LOHR, Hank's Salvage and Towing in Townsend, stated that House Bill 48 was provided to update tow trucks. (SEE EXHIBITS 3 & 4) This will make everything federally standard.

Opponents' Testimony:

None.

Questions From Committee Members:

SENATOR TVEIT asked if there is a regulation now on how many feet signs are to be placed.

HENRY LOHR stated that it is up to 200 feet, it is being changed to 450 and 600.

SENATOR KOEHNKE asked where the signs are purchased.

HENRY LOHR stated they can be bought from any number of companies.

Closing by Sponsor:

REPRESENTATIVE GRADY closed the hearing on House Bill 48.

EXECUTIVE ACTION ON HOUSE BILL 48

Motion:

SENATOR REA MOVED that HOUSE BILL 48 BE CONCURRED IN.

Discussion:

Senator Noble will carry HB 48.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

MOTION PASSED that HOUSE BILL 48 BE CONCURRED IN on a unanimous vote.

EXECUTIVE ACTION ON SENATE BILL 27

Discussion:

SENATOR SVRCEK distributed a copy of suggested amendments to Senate Bill 27. (SEE EXHIBIT 5) He explained the overall effect the amendments would have on the bill. The last amendment addresses hazardous materials. By exempting these haulers from PSC regulations, they are not exempt from hazardous material regulations. When you exempt them from PSC regulations you have no way of finding out if they are hauling hazardous materials, because they are no longer applying for a permit. Exempting them from PSC regulations does not exempt them from having to stop at weigh stations. This last amendment will require that when one of these trucks stops at a weigh station and the bill of lading indicates that they are hauling recyclable materials, the attendant will have to check for hazardous materials.

SENATOR FARRELL asked Dave Galt how GVW would go about inspecting loads.

DAVE GALT, GVW, stated that if a vehicle is placarded it would indicate that there is hazardous materials on it. They would have to check the bill of lading. He stated that they don't check the bill of lading on every truck that comes along.

SENATOR FARRELL asked if they operate their weigh stations 24 hours per day.

DAVE GALT stated they do not.

Amendments, Discussion, and Votes:

See Exhibit 5 for suggested amendments.

Recommendation and Vote:

Motion:

SENATOR FARRELL MOVED to TABLE SENATE BILL 27.

MOTION PASSED UNANIMOUSLY to TABLE SENATE BILL 27.

EXECUTIVE ACTION ON SENATE BILL 164Discussion:

SENATOR JOHN HARP distributed amendments to SB 164. (SEE EXHIBIT 6) The amendments change the Public Transportation segment in the Department of Commerce to insert "Rail and Transit". Senator Harp explained the rest of the amendments.

SENATOR FARRELL asked John Rothwell about the 4 divisions and if they would be equal in power.

JOHN ROTHWELL, Director, Department of Highways stated that the Rail Bureau, Transit Bureau, Aeronautics, and Highways are all on equal status.

SENATOR FARRELL asked why we should elevate rail to the same stature that highways and air is at right now.

SENATOR HARP stated that by putting them under one agency, they will be able to better organize motor transportation. They are not taking any earmarked accounts from one bureau to go to another. No dollars from the highway department will be taken to subsidize the transit area. Another reason why they are being sure that transit stays in form is because they made a commitment to Agriculture. Early on in the DOT proposal that any involvement dealing with litigation, they want to be sure they don't let those people down.

SENATOR FARRELL asked Senator Harp if once under rail and transit, one of the lines decides to close a spur, would the DOT be able to oppose that.

SENATOR HARP stated they will be able to comment on it, just as they do now. This is one of the selling points, the ability not to have a Department of Commerce and a Department of Highways working to different aspects. This way they will be able to coordinate the actual cost if they do have to abandon a rail.

JOHN ROTHWELL stated that in the case of a rail abandonment, it is a lot easier coordination under a DOT for the rail bureau and the highways to coordinate their effort.

SENATOR FARRELL asked who will pay for rail, if it will come from general fund money.

JOHN ROTHWELL said it will not come from general fund money.

PATRICIA SAINDON, Administrator of the Transportation Division, stated the budget that is currently made up of funds from some general fund moneys, money from the Federal Rail Administration, and money from the Urban Mass Transportation Administration. The general fund money is approximately 20%.

SENATOR WEEDING stated that there are people who are uneasy about the rail part, particularly the McCarty Farms suit. They want more assurance that this action will be pursued as vigorously as it has in the past.

SENATOR HARP stated that the amendment just put on the bill speaks about the equal footing. There will be a director and a deputy director involved with those decisions. The commitment has been made.

SENATOR WEEDING stated that by making it public, the Committee needs to acknowledge that concern and makes a public comment that the Committee is in fact are dedicated to preserving all the functions that are on going.

GEORGE PAUL, Farmers Union, stated they still are very concerned about it. As far as making a public statement that the function of the rail people will be preserved, and that the situation between the agricultural industry with the McCarty Farms case not to diminish, this is all very important to them.

EVERETT SNORTLAND, Director of the Montana Department of Agriculture, stated he was involved in some of the planning of the DOT and he feels it is the way to go. He stated he understands Mr. Paul's concerns, but he does feel they have been resolved.

Amendments, Discussion, and Votes:

SENATOR HARP MOVED to ADOPT the AMENDMENTS TO SENATE BILL 164.

MOTION TO ADOPT AMENDMENTS PASSED 8-1 with Senator Farrell opposing and Senator Tveit voting for the amendments by proxy.

Motion:

SENATOR HARP MOVED that SENATE BILL 164 DO PASS AS AMENDED.

MOTION PASSED that SENATE BILL 164 DO PASS AS AMENDED 6-2 with Senator Farrell and Senator Koehnke opposing. Senator Tveit voting by proxy for the bill as amended. SENATOR STIMATZ was absent during the vote.

EXECUTIVE ACTION ON SENATE BILL 101

Motion:

None.

Discussion:

SENATOR WEEDING stated that Martin Jacobsen from PSC has given each Committee member a handout on SB 101. (SEE EXHIBIT 7)

Amendments, Discussion, and Votes:

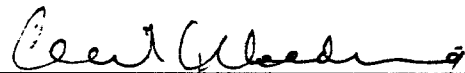
None.

Recommendation and Vote:

SENATOR NOBLE suggested that the Committee hold off until the Committee receives Representative Grady's House Bill.

ADJOURNMENT

Adjournment At: 4:45 p.m.



SENATOR CECIL WEEDING, Chairman



PAT BENNETT, Secretary

CW/pb

Amendments to House Bill No. 98
Third Reading CopyRequested by Representative Dolezal
For the Committee on Highways and TransportationPrepared by Paul Verdon
January 8, 1991

1. Title, line 6.

Following: "ATTACK"

Insert: "; PROVIDING FOR RETENTION OF SPECIAL LICENSE PLATES; AND
AMENDING SECTION 61-3-446, MCA"

2. Page 2, line 11.

Following: line 10

Insert: " Section 2. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-444, 61-3-445, 61-3-447, ~~or~~ 61-3-451, or [section 1] disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle."

Renumber: subsequent section

PEARL HARBOR SURVIVORS



This association was founded in Los Angeles, California in 1958 by eleven survivors who met to remember their shipmates and buddies who perished during the attack on military forces of the US on 7 December 1941.

The Association received a Federal Charter in 1985.


Purpose of the Association is to keep alive the memory of those who perished in the attack and to keep the American people reminded that it can happen again at any time. Our motto is "Remember Pearl Harbor - keep America Alert". This applies today against terrorism as well as an all-out military assault.

Display of the license plates in states that have authorized them to date has resulted in a great gain in membership for the Association. We have gone from 10,000 in 1988 to over 11000 in 1990.

Display of this license plate to those authorized to obtain it would make Montana members in the National association known to members and to the general population of other states in which we travel.

We have buried three survivors of the attack in the last two years that were not members of our association, possibly due to lack of knowledge of its existence.

Thank you very much for this opportunity to address the committee. I am respectfully yours,


Wm. H. Emerson, Secy-Treas
Big Sky Chapter #1, PHS A Inc.

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PEARL
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EXHIBIT NO. 3

DATE 1-31-91

BILL NO. HB 48 RECEIVED-HDO

JAN 11 1989

MONT. HIGHWAY PATR

MONTANA DEPARTMENT OF HIGHWAYS
Helena, Montana 59620

MEMORANDUM

TO: Distribution

FROM: *WJF* Gregory A. Jackson, P.E., Manager
Traffic Unit

RE: Signing Required for Wrecker Operation

DATE: January 6, 1989

A design is attached of the approved sign to be used for wrecker operations. Signs mounted on portable stands are to be a minimum size of 36"x36" with reflectorized orange background, black border and legend stating "Wrecker Ahead".

Presently a wide variety of messages, sign colors and shapes are being used for this purpose. Those signs shall be replaced by the standard sign described herein. We recommend a three-year grace period prior to enforcement of this requirement for proper signing if signs being used are reflective for night time use. If not reflective, signs should be replaced immediately.

Signs should be placed a minimum 450' (within 55 mph zones) in advance of a normal work site in each direction prior to commencement of operations (state law specifies signs shall be placed 200' in advance, which is in violation of the MUTCD). In the event vehicles awaiting passage through the worksite queue up beyond the signs, then signs should be moved to provide adequate warning for a safe stop at the trailing end of the queue.

Please make a distribution of this letter and design that will ensure implementation prior to January 1, 1991. If anyone has comments or questions about this standard, contact me at 444-617 or Gerald Knudson at 444-6222.

GAJ:GK:cm:5/e-2

Attachments

cc: District Engineers
Colonel Robert Landon
Don Gruel
Al Goke

MEMORANDUM

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Please make a distribution of the letter and design that will ensure implementation prior to January 1, 1991. If anyone has comments or questions about this standard, contact me at 444-6170 or Gerald Knudson at 444-6222.

ESS-1 & 2 Emergency Sign System

Accident avoidance is best achieved through advance warning. Our Emergency Sign System gives motorists advance warning of a problem ahead and that means extra protection for you.

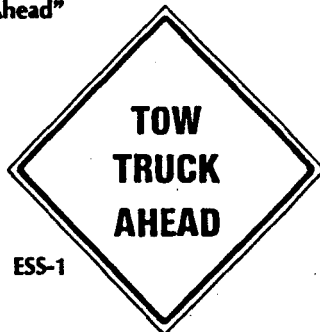
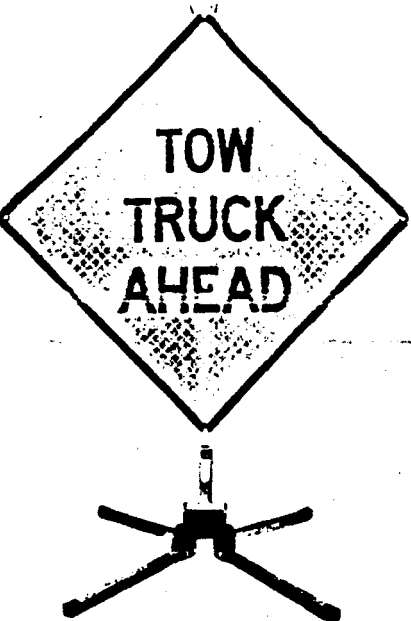
The sign itself is a highly reflective orange, 36" Reflexite panel. This is supported by an amazing energy absorbing base which enables the system to withstand 50 MPH wind gusts effortlessly. The system sets up or breaks down in one minute, it requires no tools and it collapses compactly enough to store behind a bench seat or in a tool box. The ESS-1 & 2 includes two safety flags and a heavy duty sign storage bag. Day or night these signs will get noticed and we've kept the wording simple so they're easy to read and understand.

ESS-1 Emergency Sign System \$~~120.00~~
with "Tow Truck Ahead"
sign (Wt. 24 lbs.)

ESS-2 Emergency Sign System \$~~120.00~~
with "Accident Ahead"
sign (Wt. 24 lbs.)



Simple to set up and take down. Compact and lightweight for easy storage. The most reflective sign available.



ESS-1



ESS-2

Give yourself an extra margin of safety by giving motorists advance warning. Meets Federal requirements.

Amendments to Senate Bill No. 27
First Reading Copy

Requested by Senator Svrcek
For the Committee on Highways and Transportation

Prepared by Paul Verdon
January 29, 1991

1. Title, lines 4 and 5.
Strike: "MOTOR VEHICLES USED EXCLUSIVELY FOR"
2. Title, line 6.
Strike: "OR RECYCLED"
3. Title, line 7.
Following: "CARRIERS;"
Insert: "REQUIRING IDENTIFICATION OF LOADS OF HAZARDOUS MATERIAL;"
4. Title, line 7.
Following: "SECTIONS"
Insert: "61-10-231,"
Following: "69-12-101"
Insert: ", "
5. Page 2, line 20.
Following: line 19
Insert: "(9) "Processing facility" means a commercial facility that as its primary business sorts or packages a recyclable commodity and prepares the material to be acceptable to the marketplace."
Renumber: subsequent subsections
6. Page 2, line 24.
Strike: "or recycled"
7. Page 2, line 25.
Strike: "collected or recovered"
Insert: "diverted"
Following: "from"
Insert: "the solid"
8. Page 2, line 25 through page 3, line 1.
Following: "waste" on line 25
Strike: remainder of line 25 through "center" on page 3, line 1
Insert: "stream that can be reused as raw material for a new product and for which a market exists"
9. Page 3, line 2.
Following: line 1
Insert: "(13) "Recycling facility" means a facility that accepts recyclable commodities.
(14) "Redemption facility" means a facility that accepts recyclable material for compensation.

(15) "Shipping facility" means a facility that moves recyclable material to the marketplace."

10. Page 5, line 16.

Following: "used"

Strike: "exclusively"

11. Page 5, line 17.

Strike: "or recycled"

Following: "materials"

Insert: "between materials processing, redemption, recycling, shipping, and manufacturing facilities"

12. Page 5, line 20.

Following: line 19

Insert: "Section 3. Section 61-10-231, MCA, is amended to read:

"61-10-231. Enforcement -- identification of hazardous loads. (1) The highway patrol and any designated employee of the department of highways shall enforce this part and 61-3-502(1), and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part and 61-3-502(1) to ascertain whether or not those laws are being complied with.

(2) If a bill of lading indicates that a load being transported is recyclable material, as defined in 69-12-101, and if the person performing the examination or inspection under subsection (1) determines that the load consists of hazardous material, the person making the examination or inspection shall require that the transporting vehicle be plainly and legibly marked to indicate that hazardous material is being transported."

Amendments to Senate Bill No. 164
First Reading Copy

For the Committee on Highways and Transportation

Prepared by Paul Verdon
February 1, 1991

1. Page 4, line 16.

Strike: "public transportation"

Insert: "rail and transit"

2. Page 6, line 15.

Strike: "and"

3. Page 6, line 16.

Following: line 15

Insert: "(c) transloading facilities under 7-14-120;"

Renumber: subsequent subsection

4. Page 6, line 16.

Following: "11"

Insert: "; and

(e) state representation activities under 60-21-101"

5. Page 6, line 18.

Following: "7-14-102"

Insert: ", 7-14-120"

6. Page 6, line 19.

Strike: "chapter"

Insert: "chapters"

Following: "11"

Insert: "and 21"

EXHIBIT NO. 7
DATE 1-31-91
BILL NO. SB101

PSC INFORMATION AND REFERENCE PACKET

SB101 -- 52nd Legislature
Senate Committee on Highway and Transportation Executive Session
January 31, 1991

Contents

1. PSC Comments
2. 69-12-324 existing
3. Excerpts from Roberts, Montana Supreme Court
4. PSC's draft legislation
5. SB 101 as introduced (white copy)
6. PSC's proposal for amendment to SB 101 as introduced

PSC COMMENTS ON SB 101 -- 52nd Legislature

1. The PSC requested legislation in an attempt to accommodate the concerns expressed by the Montana Supreme Court in the Roberts case regarding a lack of clarity in Section 69-12-324, MCA.
2. The PSC did not request any change in the substance of Section 69-12-324, MCA.
3. SB 101, as introduced (white copy) does change the substance of Section 69-12-324, MCA, by extending the contract proof of public convenience and necessity to transportation of persons by the state and solid waste by the federal government.
4. This change is contrary to the PSC's request.
5. This change in substance is not clearly identified or contained in the title of SB 101.
6. The PSC's proposed amendment remedies these things.

69-12-324. Special provisions when federal or state contract involved. (1) The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

1-31-71
5B 101

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract.

History: En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 476, L. 1977; R.C.M. 1947, 8-110(2); amd. Sec. 15, Ch. 588, L. 1983; amd. Sec. 2, Ch. 178, L. 1985.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-324. Special provisions when federal or state contract involved.

Compiler's Comments

1985 Amendment: In (1)(a) deleted "or commodities" after "hire of persons".

1983 Amendment: In (1), deleted first sentence, which read: "The transportation for hire of any persons or commodities between any two points within the state by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government or an agency or department thereof or the state or an agency or department thereof for the transportation of solid waste shall be deemed a transportation movement subject to the provisions of this chapter.", inserted last sentence of (1) and (1)(a) and (1)(b) describing transportation movement; and in (1), (2), and (3) inserted "government" before "contract" in six places.

Administrative Rules

ARM 38.3.402 Applications for motor carrier authority — fees.

Case Notes

Application of Section: Section 8-110, R.C.M. 1947 (now 69-12-313 and 69-12-324), does not contemplate the inclusion of those engaged in other businesses and using motor vehicles solely for the incidental purpose of delivering and transporting their own goods and merchandise in the course of such businesses. *Bd. of R.R. Comm'rs v. Gamble-Robinson Co.*, 111 M 441, 111 P2d 306 (1941).

Attorney General's Opinions:

Federal Reserve Banks and National Banks as Agencies of U.S. Government: Federal Reserve Banks and national banks are agencies of the U.S. government for the purposes of this section. Accordingly, a contract between such banks and a motor carrier is proof of public convenience and necessity. 39 A.G. Op. 47 (1982).

Collateral References

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance. 15 ALR 2d 883.

STATE REPORTER

Box 749

Helena, Montana 59624

VOLUME 47

No. 89-492

STATE ex rel. H. R. ROBERTS and ELIZABETH ROBERTS,
d/b/a H. R. ROBERTS & SONS, INC.,
Relators and Appellants,

Submitted: Mar. 13, 1990

Decided: Apr. 13, 1990

PUBLIC SERVICE COMMISSION OF
THE STATE OF MONTANA,
Respondent and Respondent,
and
WATKINS AND SHEPARD TRUCKING, INC.,
Intervenor and Respondent.

ADMINISTRATIVE LAW--CONSTITUTIONAL LAW--CARRIERS, Appeal from order
denying petition for declaratory judgment and writ of mandamus.

1. Sec. 69-12-324, MCA, does not create a blanket exemption from the public convenience and necessity hearing for all government contracted Class C carriers.
2. Award of a contract under the Montana Procurement Act does not in itself excuse the winning carrier from a public convenience and necessity hearing under the Motor Carrier Act.
3. The difference between the agencies' abilities to evaluate and regulate transportation companies provides a reasonable basis for granting an exemption to state contracted solid waste carriers and not to state contracted commodities carriers. This disparate treatment does not violate Appellant's right to equal protection.

Appeal from the First Judicial District Court, Lewis and Clark County,
Honorable Jeffrey M. Sherlock, Judge

For Appellants: W. William Leaphart, Helena

For Respondents: Robin McHugh, Helena
Stanley T. Kaleczyc, Helena

Mr. Leaphart argued the case orally for Appellant; Robin McHugh and Stanley Kaleczyc for Respondents.

Opinion by Chief Justice Turnage; Justices Hunt, Barz, McDonough and Weber, and the Honorable L.C. Gulbrandson, retired Justice, sitting in place of Justice Sheehy, concur. Justice Harrison specially concurs and filed an opinion.

Affirmed.

Mont.

P.2d

State ex rel. Roberts, Relators and Appellants, v.
Public Service Commission, Respondent and Respondent
47 St.Rep. 774

LX. T
1-31-91
SB 101

Thiel v. Taurus Drilling Ltd. (1985), 218 Mont. 201, 205, 710 P.2d 33, 35.

The PSC asserts that the statute is plainly unambiguous. "[I]t is not necessary to resort to legislative history to interpret 69-12-324. The PSC has frankly been astounded by the statutory exegesis that the Roberts and the District Court have undertaken in an effort to grasp the meaning of a law that the PSC considers plain on its face." We disagree with the PSC. Section 69-12-324, MCA, is so poorly written that its plain language appears to have no effect whatsoever. Subsections (1) and (2) speak of presenting "the" written contract without identifying the contract to which they refer. Subsections (1)(a) and (1)(b) define "transportation movement"--a term which cannot be found anywhere else in the Motor Carrier Act. Subsection (2) speaks of issuing a Class C certificate even though one of the two categories purportedly covered--solid waste carriers--is statutorily defined as a Class D carrier. Section 69-12-301(5), MCA. Like the District Court, we find it necessary to engage in some "statutory exegesis" to determine what the legislature intended.

The current confused nature of the exemption statute, and the present issue, appear to be the direct result of numerous amendments and procedural recodification of the exemption statute and related provisions of the Montana Motor Carrier Act. The Act originally defined Class C carriers as including all carriers operating under contract. Section 3847.2, RCM (1935). Section 3847.10, RCM (1935), required Class C carriers to apply for a certificate of convenience and necessity which could be issued only after a public hearing. The 1971 Legislature added a subsection to the statute, then codified at sec. 8-110, RCM (1947), exempting from the hearing requirement Class C carriers operating under United States government contracts to transport persons or commodities. Act approved February 27, 1971, ch. 69, sec. 1, 1971 Mont. Laws 506, 508-09. The 1975 Legislature amended the new subsection extending the exemption to carriers operating under state contracts to haul solid waste. Act approved March 27, 1975, ch. 179, sec. 1, 1975 Mont. Laws, 315, 316. The 1977 Legislature amended the Act's classification system creating the D classification for waste carriers. Act approved March 25, 1977, ch. 138, sec. 1, 1977 Mont. Laws 466, 467. During the 1979 change from the Revised Codes of Montana to the Montana Code Annotated, the hearing exemptions were recodified in sec. 69-12-324, MCA. In 1983, the Legislative Audit Committee rewrote sec. 69-12-324, MCA, and other statutes as part of a Sunset Audit of the PSC statutes. Act approved April 19, 1983, ch. 588, sec. 15. 1983 Mont. Laws 1394. 1402.

All of this legislative tinkering has produced three underlying problems which obscure the meaning of the exemption statute. First, the enumeration of the current exemption statute gives the false impression of an exemption for all government contracted Class C carriers. The original exemption in sec. 8-110(2), RCM (1947), contained three unnumbered paragraphs. The first paragraph provided that the transportation of passengers or commodities under United States government contract was subject to all provisions of the Montana Motor Carriers Act except that presentation of such a contract

was sufficient proof of convenience and necessity. The second paragraph provided that a certificate could be issued without convening a hearing. The third paragraph provided the duration of the certificate and is not presently at issue. In the original exemption statute, the second and third paragraphs merely filled out the procedural details of the exemptions provided in the first paragraph.

During the 1979 general recodification, the three paragraphs were enumerated (1), (2), and (3). Roberts now contends that subsection (2) creates an exemption in addition to those set out in subsection (1). However, as Watkins argues, the supplementary function of subsection (2) is still apparent in the current version of the paragraph. Subsection (2) refers twice to "the . . . government contract." "The" refers to the contract originally described in subsection (1).

Second, subsection (2)'s reference to Class C carriers gives the impression that it creates an exemption in addition to those granted in the first paragraph. Roberts argues that because subsection (2) refers to Class C carriers, it creates an exemption separate from that extended to solid waste carriers who are statutorily defined as Class D carriers. The PSC argues that, when they transport under state contract, solid waste carriers change from Class D to Class C. Regardless of how the PSC categorizes them, under the plain language of the statutes, contracted solid waste carriers fall within both classes; Class C covers all contract carriers, sec. 69-12-301(4), MCA, and Class D covers all solid waste carriers, sec. 69-12-301(5), MCA.

The exemption statute confuses the classifications. It has always referred only to Class C carriers. When the 1975 Legislature extended the exemption to state contracted solid waste carriers, they fell only under Class C. Section 8-102(a), RCM (1947). However, when the 1977 Legislature created the new D classification, it failed to provide a corresponding amendment to the exemption statute. Furthermore, when the 1977 Legislature created Class D, it passed a companion statute prohibiting Class A, B, and C carriers from hauling waste. Act approved March 25, 1977, ch. 138, sec. 2, 1977 Mont. Laws 466, 467. The result was an exemption statute which purported to exempt solid waste carriers but referred to them as Class C carriers--a classification that was statutorily prohibited from carrying solid waste.

The 1983 Sunset Audit of the PSC statutes produced an oblique reference to the exemptions statute which partially corrected the inconsistencies. It amended the prohibition against waste hauling by Classes A, B, and C to read:

"Except as provided in [the exemption statute], no Class A, B, or C carrier will be authorized or permitted to transport . . . waste . . ."

Act approved April 19, 1983, ch. 588, sec. 16, 1983 Mont. Laws 1394, 1403 (emphasis indicates amendment). In spite of the plain language of the classification statutes, the Audit Committee apparently assumed that Class D carriers become Class C carriers when operating under

government contract.

Third, the Audit Committee also exacerbated the confusion by defining the term "transportation movement," in subsection (1) of the exemption statute. Prior to 1983, the statute provided that, with the exception of the hearing requirement, the transportation of passengers and commodities under United States government contract, and the transportation of solid waste under state government contract, "shall be deemed a transportation movement subject to the provisions of this chapter." Section 69-12-324(1), MCA (1981). The obvious purpose of the phrase was to ensure that, even though the carriers were exempted from the hearing requirement, they were still subject to all other provisions of the Montana Motor Carrier Act. In an apparent attempt to simplify the statute, the Audit Committee turned this phrase on its head. Act approved April 19, 1983, ch. 588, sec. 15, 1983 Mont. Laws 1394, 1402. It now reads, "Subject to the provisions of this section, a transportation movement is considered to be" Instead of making the designated contract carriers subject to the provisions of the Motor Carrier Act, it now defines "transportation movement" as including the designated contract carriers. The definition has no apparent purpose since "transportation movement" appears nowhere else in the current or previous versions of the exemption statute, the Motor Carrier Act, or the administrative regulations.

The end product of these piece-meal amendments is a set of statutes which is, in various parts, inconsistent, contradictory, and superfluous. The meaning of the exemption statute is so obscure that Roberts can now make a plausible argument that it exempts from the hearing requirement all Class C contract carriers. The bottom line, however, is that the District Court was correct; there is no evidence that the legislature ever intended to create such an exemption. To the contrary, during the 1983 Sunset Audit, the PSC presented the legislature its uncontested interpretation of sec. 69-12-324, MCA, as exempting only federally contracted passenger carriers and state contracted solid waste carriers. Mont. Public Service Comm'n. Summary of the Legislative Audit Comm. Bill: S.B. 436, at 4, House Admin. Comm., March 14, 1983; Mont. Public Service Comm'n. Statement in Support of S.B. 436, exhibit no. 4, Senate Business and Industry Comm., February 19, 1983.

[1] We hold that whatever sec. 69-12-324, MCA, does, it does not create a blanket exemption from the public convenience and necessity hearing for all government contracted Class C carriers.

We invite, with some trepidation, the legislature to again consider the Motor Carrier Act. Carriers such as Roberts should be able to determine their rights and responsibilities by reading the plain language of the statutes. Presently that is not the case.

PREEMPTION

The Montana Procurement Act [hereinafter MPA] and the PSC's public convenience and necessity hearing serve distinct purposes. The MPA requires state agencies to purchase most supplies and services through a competitive bid procedure. Section 18-4-302(1), MCA. The MPA

52nd Legislature

LC _____

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND, FOR CLARIFICATION, SPECIAL PROVISIONS APPLICABLE IN MOTOR CARRIER REGULATION WHEN CERTAIN FEDERAL OR STATE CONTRACTS ARE INVOLVED; AMENDING SECTION 69-12-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-12-324, MCA, is amended to read:

"69-12-324. Special provisions when certain federal or state contract involved. (1) The presentation to the commission of the a written contract to the commission with the United States government or state government shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. ~~---Subject to the provisions of this section, a transportation movement is considered to be~~ for for-hire transportation of:

(a) ~~the transportation for hire of~~ persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) ~~the transportation for hire of~~ solid waste between two points within the state by a motor carrier pursuant to the terms

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of a written contract between the carrier and the state government or an agency or department thereof.

(2) ~~The Class-C~~ The commission may issue a certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission identified in subsection (1), above, upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract identified in subsection (1), above, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract."

Section 2. This act is effective on passage and approval.

- E N D -

1-31-91
5B 101

Senate Bill No. 101
Doc 101

1 INTRODUCED BY
2 BY REQUEST OF THE PUBLIC SERVICE COMMISSION

3 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY SPECIAL
4 PROVISIONS APPLICABLE TO MOTOR CARRIER REGULATION WHEN
5 CERTAIN FEDERAL OR STATE CONTRACTS ARE INVOLVED;
6 IMPLEMENTING THE DECISION OF THE MONTANA SUPREME COURT IN
7 STATE EX REL. ROBERTS V. PUBLIC SERVICE COMMISSION, 790 P.2D
8 489, 47 ST. REP. 774 (1990); AMENDING SECTION 69-12-324,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

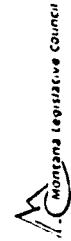
11 **Section 1.** Section 69-12-324, MCA, is amended to read:
12 "69-12-324. Special provisions when certain federal or
13 state contract contracts involved. (1) The presentation to
14 the commission of the a written contract to the commission
15 with the United States government or state government shall
16 be deemed sufficient proof of public convenience and
17 necessity in accordance with the terms and conditions
18 contained within the United States government or state
19 government contracts. Subject to the provisions of this
20 section, a transportation movement is considered to be
21 contract for hire transportation of:

22 (a) the transportation for hire of persons between

1 points within the state by a motor carrier pursuant to the
2 terms of a written contract between the carrier and the
3 United States government or an agency or department thereof;
4 or
5 (b) the transportation for hire of solid waste between
6 two points within the state by a motor carrier pursuant to
7 the terms of a written contract between the carrier and the
8 state government or an agency or department thereof.

9 (2) The Glass-Steagall Commission may issue a certificate of
10 public convenience and necessity issued pursuant to the
11 terms and conditions of the a United States government or
12 state government contract may be issued by the commission
13 identified in subsection (1) upon receipt of an executed
14 copy of the United States government or state government
15 contract. The certificate of public convenience and
16 necessity may be issued thereafter without requiring the
17 commission to fix a time and place for public hearing.

18 (3) The certificate of public convenience and
19 necessity, issued pursuant to the terms of the a United
20 States government or state government contract identified in
21 subsection (1), is authorized only for the duration of the
22 United States government or state government contract
23 concerned. The certificate may be renewed for another
24 definite term if the same motor carrier is the motor carrier
25 authorized to operate under the United States government or



LC 0448/01

- 1 state government contract."
- 2 NEW SECTION. Section 2. Effective date. [This act] is
- 3 effective on passage and approval.

-ER3-

EX. T
1-31-91
SB 101

Public Service Commission's Proposal
for Amendment to SB 101,

Amendment to SB 101, as introduced (white copy).

1. Page 2, line 1.
Following: "motor carrier"
Strike: ~~"pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof"~~
Insert: "pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof"

2. Page 2, line 6.
Following: "motor carrier"
Strike: ~~"pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof"~~
Insert: "pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof"

Mr. Chairman,

I vote for Harps Amendments to SB 164

I vote for SB 164 as amended

Sen. Truitt

COMMITTEE ON: HIGHWAYS AND TRANSPORTATION

DATE: January 31, 1991

VISITOR'S REGISTER

NAME	REPRESENTING	BILL #	SUPPORT	OPPOS
Henry E. Lohr	Hank's Salvage & Towing	HB 48		
Martin Jacobson	IPSC	SB 101		
HOWARD ELLIS	✓✓✓	✓		
Everett Shortland	Int Dept of Ag	SB 164	✓	
Rep Ed Dolezel		HB 98	✓	
WM. H. EMERSON	Pearl Harbor Survivors	HB 98	✓	
DL. Bishop	" "	"	✓	
DON PURCELL	" "	"	✓	
Jim Schibsted	" "	"	✓	
EVE FRANKLIN	MT STATE SENATE ^{SPONSOR}	HB 98	✓	
Dick Baumgardner	DAV Dept. ML	"	✓	
George Poston	United Veterans Con. MT.	HB 98	✓	
John DENHERDER	Disabled Amer. Vets	HB 98	✓	
E. T. Shea	D. A. V.	"	✓	
Rich Brown	MT Board of Vets Affairs	"	✓	

(PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY)